



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 August 2005

at the request of the Central Bank of Cyprus

**on a draft law amending the Settlement Finality in Payment Systems and Securities Settlement
Systems Law of 2003**

(CON/2005/28)

1. On 15 July 2005, the European Central Bank (ECB) received a request from the Central Bank of Cyprus (CBC) for an opinion on a draft law amending the Settlement Finality in Payment Systems and Securities Settlement Systems Law of 2003 (hereinafter the ‘draft law’).
2. The ECB’s competence to deliver an opinion is based on the third and fifth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹ and Article 25.1 of the Statute of the European System of Central Banks and of the European Central Bank, as the draft law relates to: (i) the CBC, a national central bank; (ii) payment and settlement systems; and (iii) the scope and implementation of Community legislation relating to the stability of the financial system. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.
3. The ECB notes that the main purpose of the draft law is to address a number of discrepancies between Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems² (hereinafter the ‘Directive’) and certain provisions of the Settlement Finality in Payment Systems and Securities Settlement Systems Law of 2003 (hereinafter the ‘SFL’), implementing the Directive into Cypriot law. The discrepancies addressed by the draft law relate to the SFL’s coverage of: (i) voluntary winding-up of participants in a payment and securities settlement system; and (ii) systems governed by the law of another Member State and operating in another Member State. The ECB notes that these discrepancies have previously been identified and welcomes the action of the CBC to address them.
4. Section 4 of the draft law provides that, in the event of voluntary liquidation proceedings, the moment of the opening of such proceedings is to be the moment when the voluntary winding-up resolution is adopted, thereby bringing voluntary liquidation proceedings within the scope of the

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 166, 11.6.1998, p. 45.

SFL. Moreover, the draft law provides that, following the adoption of a voluntary winding-up resolution, the participant subject to liquidation proceedings shall immediately notify such resolution to the competent authority, which shall inform the ECB and the competent authorities of the other Member States.

5. Sections 3 and 5 of the draft law, read in conjunction with Section 2, provide that the SFL shall apply to any payment and securities settlement system governed by the law of a Member State and operating in any currency or in various currencies which the system converts one against another. This unequivocally extends the coverage of the SFL to payment and securities settlement systems which are governed by the law of another Member State and which have not been designated by the CBC but instead by the competent authority of another Member State.
6. On the basis of the above, the ECB welcomes the core objective of the draft law, which is to amend the SFL in the interests of achieving legal certainty and eliminating the legal risks inherent in the participation of institutions established in Cyprus in payment and securities settlement systems. The Directive represents an important step towards providing certainty with regard to the determination of the applicable law and to the insulation from insolvency proceedings of transactions and assets provided as collateral within a payment and securities settlement system. The ECB welcomes measures taken by Member States for the proper application of the provisions of the Directive and for securing the achievement of its aims.
7. The ECB further notes that, while it does not comment in detail on individual provisions of the draft law, these do not appear to raise concerns of substance, as they are generally consistent with the purpose of the draft law as well as with the provisions and purposes of the Directive.
8. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 10 August 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET